

(2013) 05 DEL CK 0058

In the Delhi High Court

Case No : C.R.P. 2 of 2013

Cement Corporation of India

APPELLANT

Vs

Amarjit Singh and Others

RESPONDENT

Date of Decision : 16-05-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 6 Rule 17, 151, 152, 153

Citation : (2013) 8 AD 411 : (2013) 201 DLT 207

Hon'ble Judges : Veena Birbal, J

Bench : Single Bench

Advocate : Rakesh Tikku, with Ms. Tanu Priya Gupta and Mr. Amit Panigrahi, for the Appellant; P.K. Rawal, for the Respondent

Judgement

Veena Birbal, J.—By way of this petition, challenge has been made to order dated 4.12.2012 passed by the learned Civil Judge, Delhi on an application bearing CS No. 117/2012 u/s 151/153 of the CPC filed by respondents for making necessary correction in the site plan and the correct site plan be allowed to be placed on record. The background of the case is as under:-

The petitioner herein is a tenant of respondents. The respondents i.e. plaintiffs before the Id. trial court had filed a suit for recovery of possession, arrears of rent/damages/mesne profits and permanent injunction against the petitioner in respect of Flat No. 2, Ground floor, Building No. 87, Nehru Place, New Delhi. The said suit i.e. Suit No. 96/06/04 was filed in the year 2004. During the pendency of the said suit the respondents/plaintiffs had moved an application under Order 12 Rule 6 of the CPC for passing the judgment on the basis of admissions made by the petitioner/defendant in the written statement. The said application was contested by the petitioner/defendant by filing a reply. After hearing the learned counsel for parties the aforesaid application was allowed by the learned Civil Judge vide order dated 29.7.2008 whereby the petitioner/defendant was directed to hand over the peaceful and vacant possession of suit property bearing Flat No. 2 at Ground Floor, Building No. 87, Nehru Place, New Delhi to the respondents

within two months from the date of order as per site plan. It was further ordered that the decree sheet be prepared accordingly.

2. The aforesaid order was challenged by the petitioner/defendant by filing an appeal i.e. M.C.A. No. 07/08 before learned Addl. District Judge, Delhi. The appeal was dismissed vide order dated 8.12.2009.

3. In January, 2010, the respondents/plaintiffs had moved an application u/s 151/153 of the CPC giving the background of the case and referring the two orders i.e. order dated 29.7.2008 passed by the learned Civil Judge and the Appeal Court i.e. order dated 8.12.2009 in their favour. It was stated in the said application that at the time of filing of the suit, the respondents/plaintiffs had filed a site plan in which the suit property had been shown in red colour. However, due to inadvertence and by mistake the respondents/plaintiffs had coloured the shop No. 2 i.e. the second shop from the left side, whereas, the respondent had to colour the third shop from left side i.e. the second shop from the right side and the said mistake was committed by the draftsman. It was alleged that earlier the said mistake could not be pointed out as the respondents had come across the same only two days before moving the aforesaid application. On coming to know of the mistake, the respondent got prepared the correct site plan showing the suit property in red i.e. third shop from the left side and second shop from the right side. It was prayed that the application be allowed and the correct site plan be taken on record. It was stated that it was a bona fide mistake and no prejudice would be caused to the petitioner in any manner in case the application was allowed.

4. The petitioner/defendant had opposed the said application by filing reply contending therein that the respondents/plaintiffs could not amend the site plan after passing of the decree. It was contended that the suit filed by the plaintiff was for the wrong premises for which they were not the owners/landlords.

5. The learned Civil Judge allowed the application vide impugned order dated 4.12.2012 by observing that the number of the property which has been let out was admitted by the petitioner and that all the properties situated in the area of Nehru Place are distinctly numbered and it is not difficult to locate any property by the name of apartment and number of shop/property and the mistake pointed out was not prejudicing any of the party as both the parties were knowing the actual site i.e. the subject matter of litigation. Accordingly, the application was allowed by imposing a cost of Rs. 5,000/-.

6. Aggrieved with the same, the present petition is filed.

7. Learned counsel for the petitioner/defendant has contended that the judgment and decree dated 29.07.2008 has been passed on the basis of plaint as well as site plan attached with the plaint. It is contended that if the new site plan is allowed to be taken on record, it will have the effect of modifying the decree passed which is not permissible. It is further contended that learned Civil Judge ought not have exercised jurisdiction as the learned lower appellate court had

already decided the appeal on merits vide order dated 08.12.2009. It is further contended that as regards the earlier site plan attached with the plaint the petitioner had raised an objection in the written statement that the suit property has not been correctly depicted. Despite that the correction was not made by the respondent/plaintiff. It is contended that the impugned order is illegal and is liable to be set aside.

8. On the other hand, learned counsel for the respondents/plaintiffs have contended that there is no dispute about the number/location of the tenanted premises, its description, etc. It is contended that by the impugned order court has only allowed the correction of accidental slip/mistake and the court is empowered to do so. It is contended that all the respondents are senior citizens and one of them is aged more than 70 years. It is contended that the execution petition was filed in the year 2008 and has not been executed so far. It is contended that the learned Civil Judge has only rectified the bona fide mistake. The learned counsel has submitted that it is an inadvertent error which is not affecting the merits of the case in any manner and the mistake can be corrected u/s 151 and 153 of CPC. It is further submitted that suit for the grant of mesne profits in respect of above property in respect of above property is still pending disposal.

9. It is admitted position that a suit for recovery of possession/mesne profits was filed by the respondent in respect of Flat no. 2, Ground floor in property no. 87, Nehru Place, New Delhi. In written statement the appellant had admitted the tenancy of aforesaid property. The rent agreement dated 21st January, 1982 vide which property was let out to the petitioner/defendant was also not denied. Even in the appeal whereby the petitioner/tenant had challenged the judgment in favour of respondent/plaintiff passed by learned Civil Judge under Order 12 Rule 6 CPC, no dispute was raised about the same. The mistake alleged by the respondent is that along with suit for possession/mesne profits, site plan was attached in which suit property was shown in red colour. There is no dispute that in the earlier site plan the shop number was correctly coloured. However, the respondents/plaintiffs instead of colouring the third shop from the left side i.e., second shop from the right side had coloured second shop from left side. The stand has been taken that mistake was on the part of draftsman who had prepared the site plan and it was noticed only at the time of execution proceedings. Accordingly, an application was moved u/s 151/153 CPC for placing the correct site plan on record.

10. The suit for possession was filed in the year 2004. A decree for possession in respect of said property on the basis of admission under Order XII Rule 6 CPC was passed on 29.07.2008. The appeal challenging the said decree was dismissed by learned Additional District Judge on 08.12.2009. Till now the decree could not be executed due to the petitioner/defendant having opposed placing on record the correct site plan. It is correct that in the written statement the correctness of the site plan was denied. However, there is nothing on record to

show that petitioner/defendant had filed any other site plan showing the correct position. It is also not the case of the petitioner/defendant that somebody else is in possession of the property which was shown in the site plan attached with the plaint. It appears that no arguments were advanced by petitioner/defendant when the application under Order 12 Rule 6 CPC was argued on aforesaid controversy. Had the arguments been addressed by the petitioner about the correctness of the site plan, the learned trial court would have referred it in the order dated 29.07.2008. Even in appeal challenging the aforesaid order, no contention is raised about the correctness of site plan.

11. Further, the mistake pointed out by the respondent does not prejudice either of the parties as both the parties had been knowing the subject matter of litigation. It may also be mentioned that the site plan annexed with the plaint was not exhibited as decree was passed under Order XII Rule 6 CPC.

12. The contention of the learned counsel for the petitioner/defendant that the court cannot go behind the decree under execution and cannot modify the original decree, has been examined. There is no dispute about the aforesaid legal proposition. In the present case the effort of the court below is to bring out the true effect to the decree passed.

13. In *Sheodhyan Singh and Others Vs. Musammat Sanichara Kuer and Others*, , it has been observed in para 7 that in case of a misdescription only where the identity of the property is well established, there should be no impediment to execution of the decree.

14. In *Bhavan Vaja and Others Vs. Solanki Hanuji Khodaji Mansang and Another*, it has been observed that though an executing court cannot go behind the decree under execution, but that does not mean that it has no duty to find out the true effect of the decree. In appropriate cases, for construing a decree, the executing Court can take into consideration the pleadings as well as the proceedings leading up to the decree. The jurisdiction of the executing Court does not begin and end with merely looking at the decree as it is finally drafted.

15. In *Sukhendu Bikash Lashkar Vs. Narayan Chandra Bhowmik*, , at the execution stage, the Decree Holder realized that suit property cannot be identified because of unintentional clerical error. An application was moved by the Decree Holder under Order VI Rule 17 read with sections 151 and 153 CPC for inserting correct survey of plot number. The same was rejected by the trial court. On being challenged by filing revision petition, the Guwahati High Court after discussing various judgments of the Supreme Court as well as different High Courts, set aside the order of the trial court of observing as under:-

In view of the above position of law stated by the Apex Court as well as various High Courts, there is no hesitation in the mind of this Court that the mistake committed by the plaintiff while giving the description of the plot number in the schedule to the plaint is an accidental slip or typographical and the said error cropped up in the decree can be corrected even after the decree was passed

without first amending the plaint in exercising of power u/s 152 CPC, particularly, when the suit property is identifiable for avoiding injustice and doing substantial justice. More so, a Court is also clothed with inherent power u/s 151 of CPC to face such a situation.

16. In the present case, the learned Civil Judge has allowed to correct the accident slip/omission by taking on record correct site plan showing the suit property correctly by which no prejudice has been caused to the petitioner/defendant. The learned Civil Judge was within its power to allow such an application. The petitioner/defendant is only trying to delay the execution proceedings by raising frivolous objections. No illegality is there in the impugned order which calls for interference of this court in exercise of its revisional jurisdiction.

Accordingly, the revision petition stands dismissed.

CM Nos. 2063/2013 & 505/2013

In view of the order on the main petition, no orders are required on these applications.

The same stand disposed of accordingly.